IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

**SECOND APPEAL NO.131 OF 2005**

Subhash Shantilal Shah ..Appellant

Versus

Smt.Chandabi Mardsahebjade Pirjade & Ors..Respondents

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Mr.A.A.Kumbhakoni with A.M.Kulkarni for the appellant.

Mr.Nilesh Bhutekar h/for Uday Warunjikar for respondent nos.2A to 2E, 3 to 6, 7A, 8 & 9.

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**Coram : D.B.BHOSALE,J**

DATE : 26.09.2007.

PC

1. Heard learned Counsel for the parties.

2. In this appeal, the appellant has restricted his challenge only to the observations made in paragraph-9 of the operative part of the judgment and order passed by the trial Court. Paragraph-9 of the operative part of the judgment and order dated 5.4.1993 reads thus :-

> " The share of defendant No.1 from land Gat No.1812 of village Masur shall as far as possible be given in possession of defendant No.9."

3. The appellant is original defendant no.9 who had purchased 7 ana 9 paise share of defendant no.1 from Gat no.1812 admeasuring 41.28 R by registered sale deed dated 1st April 1980. Learned Counsel for the appellant submits that the observation made in

paragraph-9 are likely to creat confusion at the time of execution. He submits that the executing authority may divide Gat No.1812 between all the sharers and only the share of defendant no.1 in this Gat would be allotted to the appellant-defendant no.9. Mr.Kumbhakoni learned Counsel for the appellant submits that the joint family of the plaintiffs and the defendants have several other properties and in view thereof it is possible to allote the entire portion of Gat No.1812, which the appellant had purchased, to the share of his vendor-defendant no.1. In my opinion, such contention can be raised before the executing authority and if such contention is raised, the executing authority shall consider it on merits in accordance with law and without being influenced by the observations made in paragraph-9 of the operative part of the impugned judgment dated 5.4.1993. It would be open for the executing authority to either allot the entire portion purchased by the appellant from Gat no.1812 to the share of his vendor defendant no.1 or the major portion thereof to his share while effecting equitable partition of the suit property. This observation however, shall not be construed as direction to the executing authority. With these observations, appeal stands disposed off.

**(D.B.BHOSALE,J)**